

**PRACTICE AND PROCEDURE MANUAL FOR**  
**MAGISTRATE JUDGE JULIET GRIFFIN**

**I. NAME AND BRIEF BIOGRAPHY**

Judge Griffin was appointed U.S. Magistrate Judge in 1995. She was graduated from Oberlin College in 1971 and from the University of Tennessee College of Law in 1978, where she was a member of the Order of the Coif and served as Editor-in-Chief of the Tennessee Law Review. Upon graduation, Judge Griffin served Judge Wiseman as one of his first law clerks. Judge Griffin worked as a Staff Attorney for Legal Services of Middle Tennessee for several years before being appointed U.S. District Court Clerk in 1985.

**II. PRELIMINARY GENERAL MATTERS**

**A. Case Management and Scheduling**

Like the other two Magistrate Judges, Judge Griffin is assigned all cases for case management that are assigned to Judge Echols, Judge Campbell, Judge Wiseman, and Judge Nixon, and those cases already assigned to the Magistrate Judge for case management that have been reassigned to Judge Trauger. Case management under Local Rule 11 is initiated by the Rule itself. The clerk issues a notice of the first case management conference before Judge Griffin, which the party filing the initial complaint (or notice of removal) is required to serve upon the opposing parties.

Judge Griffin views the case management process as an opportunity to refine and define the issues at an early stage, to discuss early settlement potential, and to consider phasing discovery as needed for consideration of settlement, filing dispositive motions and trial preparation. The initial case management conference, as well as subsequent case management conferences, can be used to determine what discovery can be provided by informal means (even during the case management conferences themselves) without the necessity of and unnecessary delay attendant to formal discovery processes. The case management conferences can also be used to anticipate disputes that may arise during the pendency of the case. Judge Griffin hopes that the case management process will provide a forum for the bar to think creatively about the management of their lawsuits in an effort to reduce both the expense and delay of lawsuits.

Judge Griffin normally requires that a lawyer representing each party appear in person at least at the initial case management conference. Such lawyer need not be local counsel or the lead lawyer as long as he or she is knowledgeable about the case and can commit to specific scheduling. Judge Griffin believes that it is important for in-person appearances at least for the initial case management conference because the case can be more adequately addressed and discussed in person and because it gives counsel an opportunity to actually confer in person. However, if extraordinary circumstances make it particularly burdensome or the needs of the case do not justify personal appearances (e.g., the parties want to stay all proceedings to explore settlement), Judge Griffin will consider a motion to schedule the initial case management conference by telephone. In that event, a proposed initial case management order should be submitted prior to the telephonic case management conference. A copy may be submitted by facsimile (615-736-7070).

Pursuant to Rule 11(d)(1)(b), the parties must confer prior to the initial case management conference and submit at the initial case management conference a proposed case

management plan. Judge Griffin prefers that a proposed initial case management order (rather than a document captioned "case management plan") be submitted, and that such proposed order include a recitation of the parties' respective theories of the case, issues in dispute, issues that have been resolved, proposed deadlines by which pretrial activities shall be accomplished, and other relevant provisions set forth in Local Rule 11(d)(1)(c) and Rule 11(d)(2). A recitation of the anticipated witnesses and exhibits is helpful and encouraged but not required.

It is not necessary that the initial case management order be submitted to the Clerk in advance of the initial case management conference. In fact, it normally delays the entry of an order. The preferable practice is to simply submit the proposed order at the initial case management conference.

Judge Griffin asks that lawyers refrain from using a stock case management order including captions that have no relevance to the lawsuit, and instead encourages the parties to think through these issues in drafting such orders and to consider phasing discovery for the relevant stages of the case, when appropriate. She notes that, when lawyers have not conferred in advance and do not submit a proposed case management order, the initial case management conference may be unnecessarily prolonged or rescheduled. Toward the goal of acquainting the court and the attorneys with the case and the anticipated issues that will arise, she will review the proposed case management order with the attorneys during the first case management conference. Judge Griffin holds initial case management conferences even when all lawyers agree to the proposed case management order.

Although, under Local Rule 11(d)(1)(b), it is the responsibility of the plaintiff's lawyer to initiate communication with other counsel, if the defendant's lawyer has not heard from plaintiff's lawyer before the initial case management conference, Judge Griffin strongly encourages defendant's counsel to take the initiative of calling or otherwise communicating with plaintiff's counsel. Otherwise, the lawyers will appear at the initial case management conference without a proposed order and without having conferred with each other, rendering the initial case management conference less than effective.

Discovery is stayed pending the initial case management conference. However, that does not mean that the parties cannot serve discovery or schedule depositions. It also does not mean that the party upon whom written discovery has been served automatically gets another 30 days from the initial case management conference to respond to the discovery. One purpose of the automatic stay of discovery prior to the initial case management conference is to allow the parties the opportunity to review any discovery served and raise any objections about the scope of the requested discovery in light of the needs of the case and/or phasing of appropriate stages of the case. The stay is not designed simply to allow counsel to put aside the written discovery to be reviewed only after the initial case management conference. See III(D)(6) below on lifting the stay of discovery.

Although submission of an initial case management plan/order is required under Local Rule 11, there are circumstances under which it makes little sense to spend the time and money drafting one for the initial case management conference. For instance, if the parties have agreed to an immediate mediation or settlement conference, or, if they agree that a motion to dismiss should be resolved prior to engaging in any discovery, submission and entry of an initial case management order could be deferred.

The initial disclosures required by Judge Griffin will not automatically be the same as Rule 26(a), and counsel should be prepared to discuss at the initial case management

conference items that should be included or excluded from the initial disclosures, and what disclosures can be made through informal processes.

Subsequent case management conferences will be scheduled depending upon the needs of the case. For instance, a subsequent case management conference will be scheduled if additional defendants will be added or have not yet been served. Subsequent case management conferences may also be scheduled after completion of particular stages of a case to assess the potential for settlement, determine whether a dispositive motion will be filed, to address further discovery, etc. A final case management conference will be scheduled, in accord with Local Rule 11(d)(6), at the conclusion of all pretrial activity so that the final pretrial matters, including the scheduling of a trial date, set in consultation with the District Judge, can be scheduled. In accord with Local Rule 11(d)(5), a trial will not be scheduled until all dispositive issues are resolved, the possibility of settlement has been explored and determined to be futile, and most, if not all, discovery has been completed. At that time, a trial date will be scheduled firmly before the District Judge to whom the case is assigned.

#### **B. Correspondence with Court**

Correspondence with the Court is not contemplated by the Federal Rules or the Local Rules. Correspondence should not be sent to the Court unless specifically directed. Any matter raised in a letter that would originally be an appropriate issue for a motion should be raised in a motion. Attorneys should call Ms. Jeanne Cox, courtroom deputy, at 736-5164, for any scheduling matters.

#### **C. Telephone Conference with Court**

Judge Griffin prefers to have conferences and hearings in the courtroom. However, if the case involves out-of-town lawyer(s) or if the conference is simply to convey to the court the status of a case, a telephone conference may be acceptable with prior approval.

#### **D. Telephone Conference with Law Clerks**

All calls should be placed with Judge Griffin's courtroom deputy, Jeanne Cox. If Ms. Cox is not available, messages may be left with a law clerk.

#### **E. Pro Hac Vice Admission**

For a case assigned to Judge Griffin, no motion for pro hac vice admission needs to be filed. The filing of a certificate of good standing signed by the clerk of another U.S. District Court is sufficient.

Counsel are reminded of the provisions of Rule 1 dealing with Notices of Appearance and requiring the designation of one attorney per law firm to whom the clerk's office should send all orders.

#### **F. Briefs**

Briefing schedules are proper for discussion at the case management conferences. Judge Griffin normally sets specific dates for filing briefs and responsive materials (including memoranda in support of a motion, in response to a motion, and in reply to the response, if necessary). Judge Griffin does not have set page limits.

## **G. Miscellaneous**

All pleadings, motions, briefs, and other filings should contain the telephone number of the attorney or pro se party submitting the filing.

## **III. PRETRIAL MATTERS - CIVIL CASES**

### **A. Dispositive Motions**

Judge Griffin is referred dispositive motions for report and recommendation by some District Judges, at their discretion. She will also rule on dispositive motions when the parties consent to trial before a magistrate judge.

Under Local Rule 8(b), motions for summary judgment must be accompanied by a separate statement of undisputed facts and each such fact must include specific citations to the record. Judge Griffin encourages attorneys to deliver to the opposing attorney the initial statement on a disk to ease the burden on the responding party so that the responses can be included on the same document. When the responding attorney files the 8(b)(7) response, a cover document should clearly indicate that it is the non-moving party's response. Judge Griffin also encourages the parties to attempt to agree upon a joint, stipulated set of undisputed facts, obviating the need for separate filings, if there are no genuine issues of material fact and the motion or motions are to be decided only as a matter of law.

### **B. Continuances and Extensions**

If appropriate, Judge Griffin will hold the initial case management conference even if all the defendants have not filed answers. Requests for rescheduling of case management conferences will be accommodated to the extent possible. All requests for rescheduling should be directed to Jeanne Cox, the courtroom deputy.

If a request for an extension or continuance is granted by telephone, the attorneys will generally be requested to submit an agreed order reflecting the change.

It should be noted that, when a party requests a continuance of the initial case management conference, the stay of discovery remains in effect, pursuant to Local Rule 11(e)(1)(a), until the initial case management conference unless otherwise ordered by the court.

Judge Griffin encourages lawyers to consult with Ms. Cox before filing a motion to continue or agreed order continuing a hearing so that a specific rescheduled date can be included in an order. Otherwise, the chance is great that the rescheduled date for a conference or hearing is just as problematic as the first date.

### **C. Pretrial Motions**

#### **1. Form of Motions**

The local rules should be followed.

## **2. Referral to Magistrates Judges**

Discovery and other pretrial motions within the ambit of case management are heard by Judge Griffin in the cases for which she is the case manager. It is not necessary for the parties to include a provision in the case management order consenting to such referrals. They are automatic and do not need the parties' consent.

## **3. Oral Argument**

If a party requests oral argument, Judge Griffin will generally grant the request.

## **4. Chamber Copies of Filings**

Copies of materials should not be delivered to chambers unless the court requests otherwise.

## **5. Proposed Orders**

It is not necessary to accompany a motion with a proposed order.

## **6. Agreed Motions**

If all parties agree to a motion, the motion should so provide. Otherwise, there is no way of knowing whether there will be any opposition and the motion will normally be suspended for the 10 day answer period. Alternatively, an agreed order can be submitted. It is not necessary to accompany an agreed order with a motion.

## **D. Discovery**

### **1. General**

All discovery issues and any other non-dispositive issues will be considered by the Magistrate Judge who serves as case manager.

### **2. Discovery Period and Extensions**

Through case management, Judge Griffin attempts to schedule the discovery necessary for each phase of the case, if appropriate, and to set realistic deadlines. Reasonable requests for extensions will be granted. Agreed orders will usually be entered if reasonable.

If agreed orders for extension of discovery or other deadlines are submitted, they should include a concomitant extension of all other affected deadlines. Otherwise, for instance, the discovery deadline may end up being extended beyond the dispositive motion filing deadline, when that was not contemplated in the original order.

### **3. Interrogatories/Responses**

#### **(a) Number Limit**

Local Rule 9(a)(2) allows 30 interrogatories per set, but there is no longer a limit on how many sets of interrogatories can be served. If the needs of a case dictate more than (or fewer than) 30 interrogatories, such issues should be raised at a case management conference, or, if that is not practical, by motion or proposed agreed order.

#### **(b) Objections**

Objections should be stated in conformance with the federal rules of civil procedure. Rule 33(b)(4) requires the statement of objection with specificity and the basis therefor.

### **4. Resolution of Discovery Disputes**

Every effort should be made by the attorneys to resolve discovery disputes before bringing them to the court's attention. Rule 37(a)(2) of the Federal Rules of Civil Procedure and Local Rule 9(e) require that the parties confer in good faith prior to the filing of a motion to compel and the moving party so certify. Judge Griffin is, however, available to hear discovery disputes, after the parties have conferred in good faith, during case management conferences, specially set hearings, by motions without hearings or, if necessary and practical, by telephone conference calls. Further, some discovery disputes can be anticipated in advance and resolved early in the proceedings.

Judge Griffin does not require that the lawyers convene a telephone conference call with her before filing a discovery motion. However, if the motion seeks relief that needs immediate attention or can be addressed easily, the parties are encouraged to schedule a telephone conference. For instance, it makes little sense to file a motion to quash a deposition subpoena for a deposition scheduled within the next 1-2 days, when the motion itself will not get to Judge Griffin's attention until after the scheduled date for the deposition.

### **5. Motions to Compel and Rule 37 Sanctions**

Judge Griffin will hear motions to compel during case management conferences or specially set hearings.

Sanctions may be granted in appropriate circumstances. Repeated failures to respond or comply may be grounds for sanctions.

Judge Griffin is unlikely to award sanctions on motions to compel if the lawyers (or parties) have not actually talked to each other and/or have not advised opposing counsel that they will move to compel. Attorneys frequently file motions to compel, attesting to having written letters or faxed memos to or left messages with opposing counsel, without actually talking to opposing counsel and/or with little time for opposing counsel to return phone calls.

## **6. Requests for Expedited Discovery**

Requests for lift of the stay of discovery that is in effect before the initial case management conference will be considered if the attorney submits the discovery to be sought, the need for expedited discovery, and the date by which the discovery is needed. If all parties are represented, the initial case management conference can be rescheduled earlier or the parties can schedule a phone call with Judge Griffin. Alternatively, if the parties agree to begin discovery before the initial case management conference, Judge Griffin will sign any agreed order submitted.

## **7. Requests for Expedited Determination**

If a discovery motion raises a time-sensitive issue, counsel are encouraged to schedule a conference call with Judge Griffin. See subsection § 4 above. As indicated above in § III(D)(6), motions are normally suspended to allow the other party to respond. Thus, a time-sensitive motion may not even get to Judge Griffin's attention until the time to respond has run unless a conference call is scheduled.

## **8. Telephone Depositions**

Telephone depositions are encouraged.

## **9. Instructing Witnesses Not to Answer**

Attorneys are not to instruct a witness not to answer a question in a deposition unless the response would require the violation of a testimonial privilege.

## **10. Confidentiality Agreements**

The party seeking to protect a document or a fact from discovery because it is "confidential" bears the burden of proving confidentiality. Agreed confidentiality orders will generally be entered if they comply with Procter & Gamble Co. v. Bankers Trust Co., 78 F.3d 219 (6th Cir. 1996), and Brown & Williamson Tobacco Corp. v. Federal Trade Comm'n, 710 F.2d 1165 (6th Cir. 1983).

# **E. Settlement**

## **1. Who Presides**

For cases referred to Judge Griffin for case management, the presumption is that Judge Griffin will refer the settlement conference to Magistrate Judge Haynes or Magistrate Judge Brown unless the parties all agree that they want Judge Griffin to preside over the settlement conference or that they want a District Judge to preside. Judge Griffin views the selection of a judge to preside over a settlement conference as an appropriate use of forum shopping and encourages lawyers to consider selecting the presiding judge in terms of each particular case.

## **2. Procedure.**

Settlement conferences are governed by Local Rule 20. Judge Griffin requires that all individual parties be present with full settlement authority and all

corporate parties must be present with representatives present with full settlement authority unless prior approval is otherwise obtained.

The attorneys are requested to give a short opening statement in the courtroom with everyone present. Thereafter, Judge Griffin meets with the parties separately.

If settlement is reached, Judge Griffin prefers that a settlement agreement be executed before the parties leave the courthouse. She warns that her settlement conferences tend to take a long time.

#### **F. Pretrial Briefs**

Pre-trial and trial procedures will be set forth in case management and/or pretrial orders. The provisions of Local Rule 11(b)(10)-(15), in effect prior to March 1, 1994, will be incorporated, as appropriate to the individual case, into such orders.

#### **G. Injunctions**

Requests for injunctive relief are normally not heard in case management cases by Judge Griffin for the same reason that dispositive motions are not normally heard in the first instance under Local Rule 11(f)(1).

### **IV. PRETRIAL MATTERS - CRIMINAL CASES**

In felony cases, suppression motions and pretrial matters will be heard by the District Judge. In misdemeanor cases upon consent, Judge Griffin will handle all such pretrial matters.

### **V. TRIAL PROCEDURE**

Trial procedures are relevant only in consent cases. The trial will be scheduled at the final case management conference.

#### **A. Scheduling and Location**

Judge Griffin will attempt to schedule trial times to accommodate the schedules of the lawyers, taking into account the jurors' schedules and the imposition on the jurors.

#### **B. Out-of-Town Parties, Witnesses, or Attorneys**

Similarly, Judge Griffin will attempt to accommodate any scheduling conflicts with out-of-town parties, witnesses or attorneys.

#### **C. Motions *In Limine***

Judge Griffin strongly encourages the use of motions in limine, and will set deadlines for filing the motions and responses thereto in advance of trial.

#### **D. Courtroom Decorum**

In case management conferences, it is acceptable to remain seated since one goal of a case management conference is to facilitate an open exchange of ideas.



#### **E. Voir Dire**

Attorneys will be allowed to conduct voir dire, after Judge Griffin conducts preliminary voir dire. If the lawyers want her to conduct more extensive voir dire, she will do so upon request prior to trial.

Judge Griffin is amenable to considering any method of jury selection, although she has most frequently used the standard method of seating 6 or more in the box, excusing any of those jurors for cause or peremptorily, seating substitute jurors, and excusing from those jurors recently seated. Judge Griffin will consider allowing back striking, upon the parties' request.

#### **F. Note Taking by Jurors**

Will be allowed. Judge Griffin will consider any objection by the parties to allowing the jurors to take notes.

#### **G. Opening Statements**

##### **1. Length**

There is no standard length.

##### **2. Use of Exhibits**

Counsel are permitted to use exhibits in opening statements.

#### **H. Side Bar Conferences**

Are allowed, although lawyers should realize that the courtroom is small and discussions during side bar conferences could be overheard by the jury. Judge Griffin would prefer to minimize the necessity for repeated side bar conferences, particularly if anticipated issues could be considered outside of the presence of the jury.

#### **I. Videotaped Testimony**

Objections, attorney argument, and irrelevant testimony should be edited before the trial. Opposing counsel shall be allowed to review the edited videotape before it is presented.

#### **J. Deposition Reading**

This is allowed.

#### **K. Exhibits**

Exhibits are to be pre-marked with exhibit tags supplied by the Clerk. Yellow tags are to be used by the plaintiff; blue tags are to be used for the defendant.

#### **L. Expert Witnesses**

Judge Griffin will not require the parties to comply with Local Rule 12(c)(6)(c), unless the parties ask that the rule apply.

#### **M. Motions for Judgment as a Matter of Law**

If practical, counsel shall submit a brief with such motion. The parties should, if practical and appropriate, apprise the court in advance of any such anticipated motions.

#### **N. Proposed Jury Instructions and Verdict Forms**

Judge Griffin encourages submission of proposed jury instructions and will set deadlines for their submissions prior to trial. If appropriate, she will also hold a pre-charge conference before trial and/or before the jury charge is finalized.

#### **O. Proposed Findings of Fact and Conclusions of Law**

These are required after the trial in non-jury cases.

#### **P. Offers of Proof**

Are allowed.

#### **Q. Closing Argument**

There is no standard length, but Judge Griffin will set time limits if appropriate and/or the lawyers request such limitations.

#### **R. Jury Deliberation**

##### **1. Copy of Instructions**

A copy will be available for the jury.

##### **2. Access to Exhibits**

Exhibits are available for the jury.

##### **3. Access to Transcript of Testimony or Videotaped Testimony**

Generally these will not be made available to the jury.

##### **4. Availability of Counsel**

Judge Griffin will attempt to accommodate counsel's schedules and will not require lawyers to wait for extended periods of time in the courthouse. Counsel will be called to return to take the verdict or appear when the jury has questions.

##### **5. Polling the Jury**

The jury will be polled upon request of counsel.

## **6. Interviewing the Jury**

Local Rule 12(h) applies and Judge Griffin will consider requests for permission to interview the jury after a trial.

## **VI. SENTENCING IN CRIMINAL CASES**

Judge Griffin handles sentencing in misdemeanor cases upon consent.

## **VII. MISCELLANEOUS**

### **A. Responsibility of Local Counsel**

Judge Griffin believes in the importance of Local Rule 1(h), which requires local counsel. She will, therefore, be reluctant to relieve a party from the requirements of this rule and will consider waiving the rule only if compliance will present an undue hardship on a party or for other unusual reasons.

### **B. Rule 11 Sanctions**

Sanctions are more likely to be awarded under Rule 16 or Rule 37 than under Rule 11. With the safe harbor provision in mind, counsel should notify the opposing party when a motion for Rule 11 sanctions is filed. Judge Griffin has assessed sanctions under Rule 16 and 37, but has assessed sanctions under Rule 11 only once.

### **C. Submissions Under Seal**

Lawyers should file papers under seal only with advance permission of the court. The under seal filing should be accompanied by a copy of the order granting the request to file under seal, by the applicable protective order, or by specific reference thereto.

### **D. Submissions in Camera**

Upon direction, submissions may be made for in camera inspection directly to Judge Griffin's office. They will not be made part of the Court file, and will be returned to the submitting party after review and resolution of the dispute at issue.

### **E. Agreed Orders**

No extra press copy is needed.